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In re application of
Steven Rogers et al.
Serial No. 09/666,113
Filed: September 20, 2000
For: METHOD OF ORIENTING OF SHOES IN A WASHING
MACHINE AND DEVICES FOR ALIGNING SHOES IN
IN A WASHING MACHINE

DECISION ON
PETITION

This is a response to the REQUEST FOR WITHDRAWAL OF ABANDONED STATUS AND RE-ISSUANCE OF AN OFFICE ACTION, filed November 15, 2002 by facsimile transmission. The requests asks that the abandonment, as set forth in the Notice of Abandonment of November 19, 2002, for failure to timely file a proper reply to the Office letter mailed February 26, 2002 be withdrawn. The requestor asserts that the Office letter mailed February 26, 2002 was not received was not received at the applicant's correspondence address..

DECISION

Since the requester asserts that the applicant did not receive the Office letter mailed February 26, 2002, the request is accepted as a petition under 37 C.F.R. § 1.181 (no fee) and is evaluated under the procedures regarding an acceptable showing of non-receipt of an office action, TMOG 1156 O.G. 53, November 16, 1993, (see also MPEP 711.02 - NEW PROCEDURE TMOG 1170 O.G. 114).

**As set forth in MPEP § 711.03(c) II - PETITION TO WITHDRAW HOLDING OF
ABANDONMENT BASED ON FAILURE TO RECEIVE OFFICE ACTION:**

"The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement."

The evidence presented by the petitioner fails to comply with the requirements set forth in MPEP § 711.03(c) II. The evidence fails to provide a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

A review of the USPTO application file reveals an Office letter was mailed February 26, 2002 but it contained an incorrect mailing address. It is noted that a CHANGE OF CORRESPONDENCE ADDRESS was filed in the instant application on June 13, 2001 but was incorrectly entered into the USPTO's computer database.

Therefore, even though the petitioner has failed to provide a copy of the docket record where the nonreceived Office communication would have been entered, such requirement is waived in view of the fact that the application file record reveals that the Office letter mailed February 26, 2002 was mailed to the incorrect address.

Therefore, the abandonment is hereby withdrawn, and the application is returned to pending status. The application shall be forwarded to the examiner for prompt remailing of the Office letter originally mailed February 26, 2002 to the correct correspondence address.

The Petition is GRANTED.

Jacqueline Stone
Jacqueline Stone, Director
Technology Center 1700
Chemical and Materials Engineering

THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL TECHNICAL CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224